



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
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DA 07-4520

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DOMESTIC SECTION 214 AUTHORIZATION GRANTED

Domestic Section 214 Application Filed for the Transfer of Control of North Pittsburgh Systems, Inc. to Consolidated Communications Holdings, Inc.

WC Docket No. 07-151

By the Chief, Wireline Competition Bureau:

Pursuant to section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214, and sections 0.91, 0.291, and 63.03 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.03, the Wireline Competition Bureau (Bureau) approves the application of North Pittsburgh Systems, Inc. (NPSI) and Consolidated Communications Holdings, Inc. (CCH) (together, Applicants) requesting approval to transfer control of NPSI and its subsidiaries to CCH.¹ The Bureau has determined that grant of this application serves the public interest,² and accordingly the application is granted pursuant to the Commission's procedures for domestic section 214 transfer of control applications.³

Salsgiver opposes grant of the application, arguing that, unless the Bureau were to impose conditions, approval of the transaction would result in anticompetitive conduct by NPSI in the service area of NPSI's subsidiary, North Pittsburgh Telephone Company (NPTC).⁴ Specifically, Salsgiver contends that it has been improperly denied access under the Act to NPTC's poles or other facilities, and

¹ Application of North Pittsburgh Systems, Inc. and Consolidated Communications Holdings, Inc. WC Docket No. 07-151 (filed July 17, 2007) (Application); *Domestic Section 214 Application Filed for the Transfer of Control of North Pittsburgh Systems, Inc. to Consolidated Communications Holdings, Inc.*, WC Docket No. 07-151, Public Notice, 22 FCC Rcd 13697 (WCB 2007); *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, WC Docket No. 07-151, Public Notice, DA 07-3680 (rel. Aug. 21, 2007). Salsgiver Communications, Inc. (Salsgiver) filed comments on August 9, 2007. Applicants filed reply comments on August 16, 2007.

² *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

³ 47 C.F.R. § 63.03.

⁴ Salsgiver Comments at 1; Letter from Loren Salsgiver, President, Salsgiver Communications, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 07-151 at 3 (filed Oct. 16, 2007) (Salsgiver October 16 *Ex Parte* Letter) (proposing specific pole attachment conditions on the merged entity).

that the merged entity would be able to offer services in competition with Salsgiver while at the same time unlawfully denying Salsgiver access to its poles.⁵

The Applicants filed reply comments arguing that Salsgiver failed to demonstrate that the transaction is not in the public interest.⁶ Applicants contend that Salsgiver's pole attachment complaints are based on prior conduct, are not related to the proposed transaction, and should not be resolved in this proceeding.⁷ Applicants further argue that Salsgiver has already received relief addressing its pole attachment complaints in one Commission enforcement proceeding,⁸ and is awaiting a decision in another pending Commission enforcement proceeding.⁹ Therefore, Applicants claim that imposing merger conditions would be redundant to the requirements set forth in the *Salsgiver Order* and relief sought in the Salsgiver Complaint Proceeding.¹⁰ Finally, Applicants maintain that Salsgiver's claim that the transaction will result in the merged entity engaging in further anticompetitive behavior is speculative.¹¹

After careful consideration of the record in this proceeding, we conclude that the concerns raised by Salsgiver (and supported by Core)¹² are not sufficient to persuade us to deny the merger application or to impose conditions on the terms of the transfer. We find that the transaction is likely to result in certain public interest benefits, including operating and capital synergies, enhanced broadband penetration, and

⁵ *Id.* at 1-2, 6-8. On October 3, 2007, Core Communications, Inc. (Core) filed a letter supporting Salsgiver's argument. Core states that NPSI and Core are engaged in litigation before the Pennsylvania Public Utilities Commission over NPSI's interconnection obligations. See Letter from Michael B. Hazzard, Counsel for Core Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-151 at 1-2 (filed Oct. 3, 2007) (Core October 3 *Ex Parte* Letter).

⁶ Applicants' Reply at 3-10.

⁷ *Id.* at 2-3, 7-10.

⁸ In 2007, the Commission's Enforcement Bureau issued a decision granting Salsgiver's pole attachment complaint against NPTC and ordering NPTC to provide Salsgiver immediately with nondiscriminatory access to NPTC's poles. *Id.* at 2-3, 6-7; *Salsgiver Telecom, Inc. v. North Pittsburgh Tel. Co.*, File No. EB-06-MD-002, Memorandum Opinion and Order, 22 FCC Rcd 9285 (EB 2007) (*Salsgiver Order*). Salsgiver asserts that NPTC has failed to comply with the *Salsgiver Order*. Salsgiver October 16 *Ex Parte* Letter at 1. Applicants assert that NPTC has in fact complied with the *Salsgiver Order* and has offered Salsgiver Telecom, Inc. access to its poles. Letter from Gregory J. Vogt, Counsel for North Pittsburgh Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-151 (filed Oct. 22, 2007) (listing steps NPTC has taken since March 2007 to provide Salsgiver access to specific poles Salsgiver requested, but stating that Salsgiver has not yet responded to permitting and make ready work requests); see *id.*, Declaration of Kevin Albaugh, at paras. 4-6 and Attach. (proposed pole attachment agreement sent to Salsgiver Telecom, Inc.); Applicants' Reply at 8 (maintaining that NPTC has complied with the *Salsgiver Order*).

⁹ Applicants' Reply at 7-9 (citing *Salsgiver Order*, 22 FCC Rcd 9285; *Salsgiver Communications, Inc. v. North Pittsburgh Tel. Co.*, Pole Attachment Complaint, File No. EB-06-MD-004 (filed Mar. 20, 2006) (Salsgiver Complaint Proceeding)).

¹⁰ *Id.* at 9-10.

¹¹ *Id.* at 9.

¹² See generally Core October 3 *Ex Parte* Letter.

the provision of video services.¹³ We agree with the Applicants that the concerns expressed by Salsgiver are not merger-specific¹⁴ and are more appropriately resolved in the pending Salsgiver Complaint Proceeding.¹⁵ Further, the Applicants have acknowledged that consummation of the transaction will not alter NPTC's responsibility to comply with the *Salsgiver Order*¹⁶ and any order released in the pending Salsgiver Complaint Proceeding.¹⁷ Finally, we find that Salsgiver's claim that the Applicants will engage in further anticompetitive behavior after consummation is speculative and is not supported by evidence in the record. We are thus satisfied that the proposed transaction is in the public interest and should be granted.

The Bureau finds, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity, and therefore grants the requested authorization. Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Dennis Johnson, (202) 418-0809, Competition Policy Division, Wireline Competition Bureau.

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¹³ Application at 5; Applicants' Reply 6.

¹⁴ See *Verizon Communications, Inc. and America Movil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, WT Docket No. 07-43, Memorandum Opinion and Order, 22 FCC Rcd 6195, 6206-07, para. 25 (2007) (rejecting assertions that a transfer of control should be denied or conditioned based on non merger-specific issues and finding that applicants were subject to existing requirements).

¹⁵ See *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18529, para. 191 (2005) (noting that a number of issues raised by commenters were the subject of other pending proceedings).

¹⁶ *Salsgiver Order*, 22 FCC Rcd at 9297, para. 25.

¹⁷ Letter from Michael Shultz, Vice President, Regulatory and Public Policy, Consolidated Communications Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-151 (filed Sept. 13, 2007).